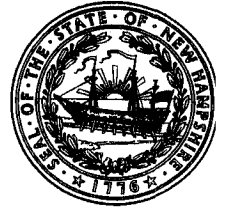




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

June 5, 2006

Michael Smith  
444 Willard Street  
Berlin, NH 03570

Re: Docket No. AF 06-005 - Administrative Fine by Consent Agreement

Dear Mr. Smith:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

**COPY**  
Michael P. Scafani,  
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner  
Anthony P. Giunta, P.G., Director, Waste Management Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
Jennifer J. Patterson, NH DOJ  
Mike Galuszka, DES WMD  
DES Public Information Officer  
City Manager of Berlin



The State of New Hampshire  
**Department of Environmental Services**



**Michael P. Nolin**  
Commissioner

Michael Smith  
444 Willard Street  
Berlin, NH 03570

**ADMINISTRATIVE FINE  
BY CONSENT**

Re: Illegal Asbestos Disposal Site in woods  
near Jericho Lake in Berlin, NH

**No. AF 06-005**

**I. INTRODUCTION**

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division and Michael Smith, pursuant to RSA 149-M:16. This Administrative Fine by Consent ("Agreement") is effective upon signature by all parties.

**II. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, New Hampshire.
2. Michael Smith is an individual with a mailing address of 444 Willard Street, Berlin, NH 03570.

**III. BACKGROUND**

1. Pursuant to RSA 149-M, the Department of Environmental Services regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100-300 and 2100-3700 ("Solid Waste Rules") to implement this program.
2. Pursuant to RSA 149-M:16, the Commissioner of DES is authorized to impose fines of up to \$2,000 per offense for violations of RSA 149-M or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. Michael Smith is an individual residing at 444 Willard Street, Berlin, New Hampshire, and has initiated renovation work to the outside of his house.
4. On November 22, 2003, DES received a complaint from a resident of Berlin, New Hampshire who stated that while hunting, he had observed several boxes of asbestos siding dumped in the woods in the Jericho Lake area.
5. On November 24, 2003, DES personnel investigated the complaint and identified two

locations where asbestos siding had been disposed.

6. At one site, identified as Site C in the DES Field Activity Report of 11/24/03, and with coordinates of N 44 degrees, 29', 44.8" / W 71 degrees, 14', 42.4", DES personnel observed one broken cardboard box containing asbestos siding. There was approximately 0.1 cubic yard of waste. Samples No. MEG 579 and 580 were taken of the dated label on the box and of the asbestos siding, respectively.
7. At a second site, identified as Site F in the DES Field Activity Report of 11/24/03, and with coordinates of N 44 degrees, 29', 26.7" / W 71 degrees, 15', 14.6", DES personnel observed five (5) boxes containing a total approximately 3 cubic yards of asbestos siding. Samples No. MEG 582 and 583 were taken of the asbestos siding and shipping labels from the boxes, respectively.
8. Based on the texture, color and composition of the siding, DES personnel concluded that the asbestos siding from both Sites C and F originated from the same location.
9. On December 22, 2004, DES personnel met with Michael Stewart, Building Inspector for the City of Berlin, New Hampshire and obtained a list of forty-three (43) building/demolition/renovation permits issued by the City of Berlin for the year 2003 for siding replacement or unspecified renovations. DES personnel learned that Michael Smith obtained a building permit on or about September 19, 2003.
10. Between January and August 2005, DES personnel visually inspected all 43 building/demolition/renovation sites. On March 8, 2005, DES personnel inspected the residence at 444 Willard Street, Berlin, New Hampshire and observed that some siding on the house had been replaced and that the color and amount of siding involved was consistent with the material found in the woods. A second, closer inspection on August 17, 2005 of the Willard Street residence confirmed that the paint color and application method and the siding texture were the same as the asbestos siding dumped in the woods.
11. On August 19, 2005, and August 22, 2005, DES personnel interviewed Michael Smith's stepson, Sean Hood, who also resides at 444 Willard Street, Berlin, New Hampshire and learned that the property owner and resident, Michael Smith, had been doing the renovation/repair work to the siding.
12. On September 7, 2005, DES personnel observed that the asbestos siding had been removed from the dump site near Jericho Lake. A check with the Androscoggin Valley Regional Refuse Disposal District transfer station revealed that no one had attempted to dispose of the missing asbestos siding at the facility.
13. On September 7, 2005, DES personnel interviewed Michael Smith regarding the siding renovation/repair work being done on his residence and the dumping of asbestos siding in the woods near Jericho Lake. DES personnel observed during the second of two interviews that the boxes in which the asbestos siding had been disposed in the woods near Jericho Lake were in a plastic bag in Mr. Smith's driveway.

14. On the morning of September 8, 2005, Michael Smith called DES at the Gorham Field Office and left a voice mail message admitting to dumping the asbestos siding in the woods near Jericho Lake, and to returning the asbestos siding to his property on Willard Street.

15. A review of DES records shows that Sites C and F as described above are not authorized sites for the disposal of solid waste, including, but not limited to asbestos wastes.

#### **IV. ALLEGATIONS**

1. Michael Smith transported to and disposed solid waste (i.e. asbestos siding) at, two facilities not approved by DES, in violation of RSA 149-M:9. Env-C 612.11(b) authorizes a fine of \$2,000 per disposal event, for a potential fine of \$4,000.

#### **V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING**

1. DES agrees to suspend the monetary fine of \$4,000 provided:

- Michael Smith maintains compliance with all DES regulations for a period of three (3) years from the effective date of this Agreement, and
- Michael Smith properly disposes of all asbestos siding wastes from demolition, renovation, or repairs of his residence at 444 Willard Street, Berlin, NH within one (1) year and provides documentation of proper disposal to DES.
- Michael Smith completes within 12 months of the effective date of this Agreement, a Supplemental Environmental Project (SEP) to consist of removing and properly disposing all solid wastes from five (5) sites in the Jericho Lake area. The five sites are to be mutually agreed to by Michael Smith and DES. Michael Smith shall be responsible for all financial payments, permit requirements, transportation and physical liability resulting from or required for this community service project. The SEP shall be considered complete upon inspection of the five sites and acceptance by DES.

2. Failure by Michael Smith to satisfactorily complete the SEP identified above in whole or in part within the time specified shall result in the suspended monetary fine of \$4,000 being due within thirty (30) days of being notified by DES. Payment shall be by certified or bank check, made out to "Treasurer, State of New Hampshire" and forwarded to DES Legal Unit, P.O. Box 95, Concord, New Hampshire 03302-0095, Attention: Michael Sclafani.

3. By executing this Agreement, Michael Smith waives his right to a hearing on or any appeal of the administrative fine identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

4. The effective date of this Agreement will be the date on which it is signed by Michael Smith, the Director of the Waste Management Division, and the Commissioner of DES.

5. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

**COPY**  
Michael G. Smith 17-MAY-06  
Michael Smith Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

**COPY**  
Anthony P. Giunta 6/2/06  
Anthony P. Giunta, P.G., Director Date  
Waste Management Division

**COPY**  
Michael P. Nolin 06 05 06  
Michael P. Nolin, Commissioner Date

cc: Gretchen Hamel, Legal Unit Administrator  
Public Information Officer, DES PIP Office  
Mike Galuszka, DES Special Investigations  
Jennifer Patterson, Senior Assistant Attorney General, NH DOJ  
Manager, City of Berlin